

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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ALFONSO PERCY PEW,  
Plaintiff,

v.

JOSE LUIS BOGGIO, et al.,  
Defendants.

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CIVIL ACTION NO. 3:15-CV-1042  
(Judge Kosik)

**MEMORANDUM**

Before the court are two Reports and Recommendations of Magistrate Judge Martin C. Carlson (Docs. 38 and 39) and a Memorandum Order (Doc. 40) filed in the above-captioned action. For the reasons which follow, we will adopt the Reports and Recommendations of the Magistrate Judge.

**BACKGROUND**

Plaintiff, Alfonso Percy Pew, an inmate currently confined at the SCI Forest, Marienville, Pennsylvania, filed the instant civil rights action on May 29, 2015. The action named as the sole defendant, Dr. Boggio, a physician at SCI-Camp Hill, and involves a failure to address Plaintiff's high blood pressure. Several motions have been filed in the action. The matter has been referred to Magistrate Judge Martin C. Carlson. Before the court are two Reports and Recommendations and a Memorandum Order, which we will address.

**DISCUSSION**

When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in

whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

A. REPORT AND RECOMMENDATION FILED NOVEMBER 18, 2015 (DOC. 38)

The instant Report and Recommendation involved Plaintiff's two motions (Docs. 28 and 36) seeking injunctive relief. Because the first motion (Doc. 28) dealt with claims against officials at SCI-Camp Hill, and because Plaintiff is no longer housed there, the Magistrate Judge found that the motion is moot.

As to the second motion for injunctive relief (Doc. 36), which dealt with several requests for relief, the Magistrate Judge found that they are not directly related to the claims in Plaintiff's complaint or amended complaint and are premature.

The Magistrate Judge goes on to address Fed. R. Civ. P. 65, and the four factors used to determine whether injunctive relief should be granted. In applying the four factors to Plaintiff's requests for injunctive relief, the Magistrate Judge concluded that Plaintiff's first motion is moot, and the second motion improperly seeks to enjoin non-parties, seeks wide-ranging relief unrelated to the claims in the lawsuit, seeks relief which Plaintiff may not be entitled to obtain and is premature since no Correction defendants have yet been served in the litigation. The Magistrate Judge recommends that the motions be denied without prejudice to Plaintiff filing a proper motion following the filing of an amended complaint.

Objections were filed by Plaintiff to the Report and Recommendation (Doc. 42-2). Specifically, Plaintiff requests the opportunity to file a supplemental complaint. No specific objections were made to the findings of the Magistrate Judge, except Plaintiff discusses access to the law library and legal materials. Moreover, we have reviewed the Report of the Magistrate Judge (Doc. 38) and concur with his

recommendation. Accordingly, Plaintiff's Motions for injunctive relief (Docs. 28 and 36) will be denied without prejudice.

**B. REPORT AND RECOMMENDATION FILED NOVEMBER 19, 2015 (DOC. 39)**

Defendant, Dr. Boggio, filed a Motion to Revoke Plaintiff's in forma pauperis status (Doc. 30), which challenges this court's finding that Plaintiff, who is in three-strike status, 28 U.S.C. § 1915(g), had adequately claimed that he faced imminent danger of serious bodily harm. Plaintiff opposes the motion to revoke his in forma pauperis status.

After reviewing the law regarding in forma pauperis, and the law of the case doctrine, the Magistrate Judge concluded that the motion to revoke in forma pauperis status (Doc. 30) should be denied without prejudice. Plaintiff filed an objection to the Report and Recommendation's finding that the motion be denied without prejudice (Doc. 42). Plaintiff also requests an opportunity to file a supplemental complaint, and discusses use of the law library and legal materials. We have reviewed the Report and Recommendation of the Magistrate Judge (Doc. 39) and concur with his recommendation. Accordingly, Defendant's Motion to Revoke Plaintiff's Leave to Proceed in Forma Pauperis (Doc. 30) will be denied without prejudice.

**C. MEMORANDUM ORDER OF NOVEMBER 19, 2015 (DOC. 40)**

On November 19, 2105, the Magistrate Judge issued a Memorandum Order wherein he Ordered Plaintiff to either (1) file a single comprehensive and comprehensible amended complaint, or (2) respond to the pending motion to dismiss by December 2, 2015 (Doc. 40). In response to the Memorandum Order, Plaintiff filed Objections (Doc. 42-1) stating that he was not served with Defendant's Motion. He also requests an opportunity to file a supplemental complaint. Finally, he discusses his legal material and law library usage.

On the date the Memorandum Order was issued, November 19, 2015,

Defendant, Dr. Boggio, filed a Notice to the Court (Doc. 41), acknowledging the failure to serve Plaintiff and stating that Plaintiff was served by U.S. Mail on November 19, 2015. On December 16, 2016, Plaintiff filed a Brief in Opposition to Defendant's Motion (Doc. 43).

Because it appears that the Defendant's Motion to Dismiss has been responded to by Plaintiff and is pending, we will refer this matter back to the Magistrate Judge for further proceedings, including Plaintiff's request to file a Supplemental Complaint.